

NORTH AMERICA.

No. 5. (1863.)

CORRESPONDENCE

RESPECTING

INSTRUCTIONS

GIVEN TO

NAVAL OFFICERS OF THE UNITED STATES

IN REGARD TO

NEUTRAL VESSELS AND MAILS.

Presented to both Houses of Parliament by Command of Her Majesty.
1863.

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LIST OF PAPERS.

Correspondence respecting Instructions given to Naval Officers of the United States in regard to Neutral Vessels and Mails.

No. 1.

Mr. Stuart to Earl Russell.—(Received August 21.)

(Extract.)

Washington, August 8, 1862.

I HAVE the honour to transmit to your Lordship copies of a despatch and its several inclosures which I received this morning from Vice-Admiral Sir Alexander Milne, giving full particulars respecting the capture of the British steamer "Adela"/* by the United States' steamer "Quaker City," and setting forth in a forcible manner the serious nature of the proceedings of the captors upon the occasion, and more particularly of the instructions under which the naval officers of the United States appear to be acting in regard to certain British vessels in the neighbourhood of the Bahamas.

I lost no time in waiting upon Mr. Seward and explaining to him that I looked upon the case as one of great gravity and urgency.

He seems fully aware that it is a case which requires immediate attention, and I thought it better not to originate a discussion with him to-day, hoping that by to-morrow he may make some communication to me which may be found acceptable by Her Majesty's Government.

Inclosure 1 in No. 1.

Vice-Admiral Sir A. Milne to Mr. Stuart.

(Extract.)

"Nile," at Halifax, August 2, 1862.

I LOSE no time in forwarding to you by the first safe opportunity the documents which I yesterday received from Commander Hewett, of Her Majesty's ship "Rinaldo," giving details of the capture of the British steamer "Adela" by the United States' cruiser "Quaker City," and reporting the purport of communications which had in consequence passed between himself and Flag Officer Lardner, commanding the United States' squadron at Key West.

It would appear that the "Adela" was bound from Liverpool and Bermuda to Nassau, for which place she had mails, that she was fallen in with near the British Island of Abaco by the United States' cruiser "Quaker City," which, without showing any colours, chased and fired at her several times.

It is further stated that she was seized before the result of any actual search could have proved that contraband of war was on board, and thus given a colourable pretext for the seizure, on the ground that her real destination was not Nassau, but some Southern port.

Grave as this transaction, in the aspect in which it is presented to me, appears to be, of far graver immediate consequence is the statement of the flag officer (if rightly understood by Commander Hewett), that their cruisers have orders to seize "any British vessels whose names were forwarded them from the Government at Washington, and that being bound from one British port to another would not prevent the United States' officers from carrying out those orders;" and further, "that such were the definite orders that they were, when and where met with, to seize British steamers or vessels of which official information had been sent them."

* The "Adela" has been condemned in the Prize Court, and an appeal will be prosecuted against the condemnation.

These instructions are so entirely at variance with the recognized principles of international law that I deem it essential to lose no time in putting you in possession of them, in order that, should you deem it expedient to do so and your instructions admit of it, an early representation may be made to the United States' Government with a view to these orders, if really issued to their cruisers, being at once recalled, and serious complications possibly averted.

Every respect and consideration have been most studiously shown by the captains of Her Majesty's ships under my command to the belligerent rights of the United States, but if British ships lawfully cleared out from, and bound to other, British ports, without the slightest indication of their deviating from their route, are to be subjected to seizure wherever found, simply because their names are on a list furnished to United States' cruisers, I cannot but fear that a collision between our ships of war and those of the Federal Government may be the result, as while, in affording all proper protection to British commerce, I am enjoined to abstain from any acts likely to involve Great Britain in hostilities with the United States, yet I am also instructed to guard our commerce from all illegal interference, and to permit no warlike operations in British waters, and further, should they be attempted within a British harbour, or within the undoubted limits of a British territory, to prevent them, if necessary, by force.

I do not conceive myself called upon to offer any opinion as to the abstract right of the Admiralty Court at Key West to break the seal of Her Majesty's mails sent in a British ship bound from one port to another, both in Her Majesty's dominions; although I apprehend this, with the other features of the seizure will hardly fail to attract the attention of Her Majesty's Government. However, I do consider that it would only have been in accordance with international courtesy had the despatches from me to the Commander of Her Majesty's ship "Greyhound," at Nassau, which it is stated were on board the "Adela," been handed over to Her Majesty's Consul, or to the Commander of Her Majesty's ship "Rinaldo," when on the spot, as I am not aware it has ever been maintained that even the condemnation of a neutral ship would extend to the official neutral despatches she may have been carrying from one neutral port to another, and so justify their being opened and detained; or that such despatches can in any sense be considered as contraband of war.

I shall forward by the mail for England, which leaves this on the 7th instant, a copy of this despatch and its inclosures to the Lords Commissioners of the Admiralty.

Inclosure 2 in No. 1.

Commander Hewett to Vice-Admiral Sir A. Milne.

(Extract.)

"Rinaldo," Halifax, August 1, 1862.

IN forwarding you a copy of the log of the British steamer "Adela," I feel it my duty to report the following conversation that took place on board the "San Jacinto" with Flag Officer Lardner when at Key West, in conversation relative to the seizure of the "Adela," and her position during the time being in British waters, and the unusual manner in which she was brought to. The Flag Officer remarked, as regards the position of the vessel when brought to, reports differ, but that the United States' vessels-of-war had orders to seize any British vessels whose names were forwarded them from the Government at Washington, and that being bound from one British port to another would not prevent United States' officers from carrying out those orders.

The Flag Officer considered that their proceedings might bring on a collision, but that such were the definite orders, that they were, when and where met with, to seize British steamers or vessels of which official information had been sent them.

No. 2.

Mr. Stuart to Earl Russell.—(Received August 24.)

(Extract)

Washington, August 12, 1862.

WITH reference to my despatch of the 8th instant, when I went to Mr. Seward on the following day to ascertain what course the United States' Government proposed to pursue in the case of the British steamer "Adela," he read to me an instruction which he was addressing in the name of the President to the Secretary of the Navy, laying down rules for the future guidance of United States' naval officers, which essentially

modify the instructions under which they have latterly been supposed to be authorized to seize certain ships, of which a list was furnished to them, when or where those ships were met with, irrespective of the observance of international law.

Mr. Seward agreed to send to me a copy of the present instruction, and I have now the honour to inclose it to your Lordship.

It appears to me to evince a proper respect for the rights of neutrals, and to be calculated to check the illegal capture of British ships having a neutral destination, and not actually caught *in delicto* in the prosecution of a voyage to an enemy's port. It is, indeed, therein admitted that such seizures are illegal.

My intercourse with Mr. Seward on the subject had, however, been so far only of an unofficial nature, and it became necessary to place the case before him in an official shape.

I accordingly determined to address to him the official note of which a copy is herewith inclosed, communicating to him the different papers which I had received respecting the "Adela," expressing satisfaction with the President's instructions above alluded to, and reserving to Her Majesty's Government to treat the particular case of the "Adela" according to their judgment of its merits.

I should state with respect to that part of Mr. Seward's letter to the Secretary of the Navy which prescribes the course to be pursued in regard to mail-bags which might be found on board captured vessels, that Mr. Seward seemed to be of opinion that mails might in some cases be obtained from Postmasters under false pretences, in order the better to disguise the real destination of such vessels; and as the British authorities to whom the mails are to be transferred, when the occasion arises, need not accept them upon the conditions proposed, unless so authorized, I offered no remark upon the order relating thereto.

Inclosure 1 in No. 2.

Mr. Seward to Mr. Stuart.

Department of State, Washington, August 9, 1862.

Mr. SEWARD presents his compliments to Mr. Stuart, and has the honour herewith to return to him the papers which he informally submitted to the Department of State a few days since, touching the recent capture of "Adela" by the United States' steamer "Quaker City," and at the same time to communicate to him the copy of a letter of yesterday which Mr. Seward addressed to the Secretary of the Navy on the subject.

Inclosure 2 in No. 2.

Mr. Seward to Mr. Welles.

Department of State, Washington, August 8, 1862.

Mr. STUART, the Chargé d'Affaires of Great Britain, has submitted to me, informally, papers touching the recent capture of the "Adela" by the United States' steamer "Quaker City," which he has received from Vice-Admiral Milne, with papers from Captain Hewett, Commander of Her Majesty's steam-ship "Rinaldo," on the station adjoining our coast, which among other things represent:—

In these papers it is stated that the "Quaker City" fell in with the "Adela" near the British Island of Abaco, and within two-and-a-half miles of the coast, and without showing any colours chased and fired at the "Adela" several times.

It is farther stated that she was seized before the result of any actual search could have proved that contraband of war was on board, which seizure was thus made without previous search, upon the ground that the real destination of the "Adela" was some Southern (blockaded American) port, and not her pretended one, Nassau.

Commander Hewett farther states that he understood the flag-officer to say that he has orders to seize any British vessels whose names were given to them in orders from the Government, and that being bound from one British port to another would not prevent the United States from carrying out these orders; and farther, that such were the definite orders that they were, whenever and wherever met with, to seize British steamers or vessels of which official information had been sent them.

It is farther reported in these same papers, that the "Adela" was bound at that time from one British port to another, and was carrying a British mail from Her Britannic Majesty's Postmasters at Liverpool and Bermuda, addressed to Her Britannic Majesty's Postmaster at Nassau, one of which bags contained despatches from the British Admiral to Her Britannic Majesty's ship "Greyhound," at Nassau; and that the flag-officer of the

"Quaker City" claimed that the-mail bags were liable to be opened, and their contents, including the Admiral's despatches, would be liable to be read in the Court of Admiralty.

It is the duty of the naval officers to be vigilant in searching and seizing vessels of whatever nation which are carrying contraband of war to the insurgents of the United States. But it is equally important that the provisions of the maritime law in all cases be observed and respected. Without waiting to inquire into the correctness of the representations of Admiral Milne thus brought to my notice, and with a view to prevent collisions between the armed vessels of the United States and Great Britain, I am directed by the President to ask you to give the following instructions explicitly to the naval officers of the United States, namely:—

First. That under no circumstances will they seize any foreign vessels within the waters of a friendly nation.

Secondly. That in no case are they authorized to chase and fire at a foreign vessel without showing their colours, and giving her the customary preliminary notice of a desire to speak and visit her.

Thirdly. That when that visit is made the vessel is not then to be seized without a search carefully made so far as to render it reasonable to believe that she is engaged in carrying contraband of war to the insurgents and to their ports, or otherwise violating the blockade; and that if it shall appear that she is actually bound and passing from one friendly or so-called neutral port to another, and not bound or proceeding to or from a port in the possession of the insurgents, then she cannot be lawfully seized.

And, finally, that official seals or locks or fastenings of foreign authorities are in no case, nor on any pretext, to be broken, or parcels covered by them read by any naval authorities of the United States; but all bags or other things conveying such parcels and duly sealed or fastened by foreign authorities will be, in the discretion of the United States' officer to whom they may come, delivered to the Consul, Commanding Naval Officer, or Legation of the foreign Government to be opened, upon the understanding that whatever is contraband or important as evidence concerning the character of a captured vessel will be remitted to the Prize Court or to the Secretary of State at Washington; or such sealed bags or parcels may be at once forwarded to this Department, to the end that the proper authorities of the foreign Government may receive the same without delay.

The President desires especially that naval officers may be informed that the fact that a suspected vessel has been indicated to them as cruizing in any limit which has been prescribed to them by the Navy Department, does not in any way authorize them to depart from the practice of the rules of visitation, search, and capture prescribed by the law of nations.

Instructions similar to this will be given to the District Attorneys of the United States.

While preparing the above, your letter of the 5th instant, with the accompanying Report of Commander James Madison Frailey, has been brought to my attention. This Report does not seem to obviate the necessity of a fuller one from that officer on the points raised by Admiral Milne. I will consequently thank you to require a supplementary Report of that character.

I am, &c.
(Signed) WILLIAM H. SEWARD.

Inclosure 3 in No. 2.

Mr. Stuart to Mr. Seward.

Sir,

Washington, August 11, 1862.

I HAVE had the honour to receive your note of the 9th instant, returning to me the papers which I had informally left with you relative to the recent capture of the British steamer "Adela" by the United States' steamer "Quaker City," and transmitting to me the copy of a letter which you had addressed to the Secretary of the Navy upon the same subject.

It is now my duty to communicate to you officially, as I do herewith, copies of the said papers, consisting of a despatch addressed by Vice-Admiral Sir A. Milne and the several inclosures belonging thereto; and I also add, for your more complete information, copies of two protests, which were entered at Key West by the master of the "Adela" and some of his crew.

The President's instructions for the future guidance of the naval officers of the United States, as contained in your letter to Mr. Secretary Welles, appear well calculated to prevent the occurrence of difficulties of the nature apprehended by Admiral Milne, and I shall have pleasure in forwarding a copy of the same to that officer, as well as to Her Majesty's Principal Secretary of State for Foreign Affairs. I say this, presuming that the

application of the first part of the instructions, relative to the seizure of vessels within the waters of a friendly nation, is only by a clerical error limited to foreign vessels.

With regard, however, to the particular case of the "Adela," whilst recommending the different papers to your serious attention, I must reserve to Her Majesty's Government full liberty to treat it according to their judgment of its merits when brought before hem.

I have, &c.
(Signed) W. STUART.

No. 3.

Earl Russell to Mr. Stuart.

(Extract.)

Foreign Office, August 27, 1862.

I HAVE received your despatch of the 12th instant and its inclosures.

I have at present only to observe that the orders for the future guidance of United States' officers, as stated in Mr. Seward's letter to the Secretary of the Navy of the 8th instant, appear to be correct and ought to suffice.

No. 4.

Earl Russell to Mr. Stuart.

(Extract.)

Foreign Office, October 10, 1862.

HER Majesty's Government are glad to find, from your despatch of the 12th August last, that the orders originally given to American cruizers, in regard to interference with neutral vessels, have been rescinded. If those orders had been sanctioned and continued in force by the Government of the United States, they would have called for prompt and firm remonstrance on the part of Her Majesty's Government; and it will be proper that you should intimate to Mr. Seward, while expressing the satisfaction of Her Majesty's Government at their revocation, that Her Majesty's Government are glad to be thereby spared from the necessity of stating their decided objections to their tenure. You will say that to order vessels, though apparently and *prima facie* carrying on a lawful trade, to be systematically seized on the high seas, without any preliminary search, or without the discovery during such search, of any strong evidence of suspicion against such vessels, would be to subject the mercantile marine of neutrals to a system of oppression and annoyance which no neutral Government could be expected to tolerate. The unjust seizure under urgent circumstances of a neutral vessel may be considered as one of the occasional burdens which a state of war may impose upon a neutral, and it may be partially compensated by the condemnation of the captor in costs, or in costs and damages; but the indiscriminate and general seizure of merchant-vessels, without previous search, converts an occasional exception into an intolerable rule.

It is desirable that you should ascertain from Mr. Seward whether the Government of the United States admits the principle that Her Majesty's mail-bags shall neither be searched nor detained.

No. 5.

Mr. Stuart to Earl Russell.—(Received November 17.)

My Lord,

Washington, November 4, 1862.

I READ the other day to Mr. Seward that portion of your Lordship's despatch of the 10th ultimo, which related to the instructions recently given to United States' naval officers in regard to the exercise of their belligerent rights in the search and capture of merchant-vessels, as well as to the question of the exemption from visitation or detention of Her Majesty's mails, when any should be found on board such vessels.

Mr. Seward showed great readiness to admit the principle for which Her Majesty's Government would otherwise have been prepared to contend, with respect to mail-bags clearly certified to be such; and in order that there might be no misunderstanding upon the subject, it was agreed between us that I should make the inquiry in an unofficial letter, to which he would give a satisfactory reply.

I have the honour to inclose copies of the letters which we have consequently inter-

changed, including a copy of a despatch from him to the Secretary of the Navy, requesting that instructions may be given to their naval officers not to search or open the public mails of any friendly or neutral Power found on board captured vessels, but to put the same, as speedily as may be convenient, on their way to their designated destinations, merely providing that the instructions should not be deemed to protect simulated mails verified by forged certificates or counterfeited seals.

I have, &c.
(Signed) W. STUART.

Inclosure 1 in No. 5.

Mr. Stuart to Mr. Seward.

Sir,

Washington, October 29, 1862.

REFERRING to our conversation of this morning, I beg to state, in order to prevent misapprehension, that the principle which my Government expects that you will admit, is that all mail-bags, clearly certified to be such, shall be exempt from seizure and visitation, and that some arrangement shall be made for immediately forwarding such bags to their destination in the event of the ship which carries them being detained.

If this principle is admitted, the necessity for discussing the claim, as a matter of strict right, that Her Majesty's mails on board a private vessel should be exempt from visitation or detention might be avoided.

I therefore hope that you will allow me to inform Lord Russell that there will be no difference of opinion between the two Governments on the point in question.

I am, &c.
(Signed) W. STUART.

Inclosure 2 in No. 5.

Mr. Seward to Mr. Stuart.

Department of State, Washington, November 3, 1862.

MR. SEWARD presents his compliments to Mr. Stuart, and with reference to his private note of the 29th ultimo, relative to the exemption of Her Britannic Majesty's mail-bags on board of private vessels, from visitation or detention, has the honour to inclose herewith the copy of a letter which has since been addressed by this Department to the Secretary of the Navy on the subject.

Inclosure 3 in No. 5.

Mr. Seward to Mr. Welles.

Sir,

Department of State, Washington, October 31, 1862.

IT is thought expedient that instructions be given to the blockading and naval officers that, in case of capture of merchant-vessels suspected or found to be vessels of the insurgents or contraband, the public mails of any friendly or neutral Power, duly certified and authenticated as such, shall not be searched or opened, but be put, as speedily as may be convenient, on their way to their designated destinations. This instruction, however, will not be deemed to protect simulated mail-bags, verified by forged certificates or counterfeited seals.

I have, &c.
(Signed) WILLIAM H. SEWARD.

No. 6.

Earl Russell to Mr. Stuart.

Sir,

Foreign Office, November 20, 1862.

HER Majesty's Government have learnt with satisfaction from your despatch of the 4th instant, that Mr. Seward has addressed to the United States' Secretary of the Navy a despatch requesting that instructions may be issued to the United States' naval

officers not to search or open the public mails of any friendly or neutral Power found on board captured vessels, but to send them forward to their destinations as speedily as possible.

I am, &c.
(Signed) RUSSELL.]

No. 7.

Lord Lyons to Earl Russell.—(Received December 26.)

My Lord,

Washington, December 12, 1862.

WITH reference to your Lordship's despatch to Mr. Stuart of the 20th ultimo, I have the honour to inclose a copy of a note in which I have expressed to Mr. Seward the satisfaction with which Her Majesty's Government had learnt that he had requested the Secretary of the Navy to give instructions respecting public mails found on board captured vessels.

I have, &c.
(Signed) LYONS.

Inclosure in No. 7.

Lord Lyons to Mr. Seward.

Sir,

Washington, December 9, 1862.

HER Majesty's Government having had under their consideration the letter to the Secretary of the Navy dated the 31st October last, of which you were good enough to send a copy to Mr. Stuart on the 3rd of last month, have seen with great satisfaction that you have requested the Secretary of the Navy to issue instructions to the United States' naval officers not to search or open the public mails of any neutral or friendly Power, found on board captured vessels, but to send such mails to their destinations as speedily as may be.

I have, &c.
(Signed) LYONS.

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